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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/520,738	09/19/2005	David Bowran	038867/286192	7230
826 7590 08/29/2008 ALSTON & BIRD LLP BANK OF AMERICA PLAZA 101 SOUTH TRYON STREET, SUITE 4000 CHARLOTTE, NC 28280-4000			EXAMINER KRUSE, DAVID H	
			ART UNIT 1638	PAPER NUMBER
			MAIL DATE 08/29/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/520,738

**Applicant(s)**

BOWRAN ET AL

**Examiner**

David H. Kruse

**Art Unit**

1638

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 June 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 22-27, 58 and 62-75 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 71-74 is/are allowed.
- 6) ☒ Claim(s) 22-27, 58, 62-70 and 75 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**STATUS OF THE APPLICATION**

1. This Office action is in response to the Amendment and Remarks filed 12 June 2008.
2. Those rejections not specifically addressed in this Office action are withdrawn in view of Applicants' amendments to the claims.
3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

***Claim Rejections - 35 USC § 112***

4. Claim 75 is rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. As a wheat plant cannot be produced by growing a hybrid lentil seed, the metes and bounds of the claim are unclear.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 22-27, 58 and 62-70 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Ponziak *et al*, U.S. Pat. App. Pub. US 2004/0237134 A1, which claims benefit of U.S. Provisional Application 60/311,282, filed 9 August 2001.

The teachings of Ponziak *et al* can be found in the previous Office action (item 10 on pages 5-6).

Applicant claims a wheat plant comprising a polynucleotide as defined in SEQ ID NO: 3, or a descendant of wheat plant designated PTA-4257 a polynucleotide as defined in SEQ ID NO: 3.

Ponziak *et al* teach a wheat plant comprising a polynucleotide that differs from instant SEQ ID NO: 3 by on nucleotide at instant nucleotide 485, but encodes an identical polypeptide (see prior Office action).

The instant claims would have been *prima facie* obvious to one of ordinary skill in the art at the time of Applicants' invention as variant having the same function as taught by Ponziak *et al*. Said disclosed wheat plant would inherently have resistance to the imidazolinone herbicide of instant claims 23-25 (see paragraph 0038 on pages 4-5 of Ponziak *et al*). The wheat plant of Ponziak *et al* would render obvious the claimed plant part or plant cell of instant claim 26 and 27. Ponziak *et al* teach said wheat plant further comprising an Imi1 nucleic acid at claim 10. The wheat plant taught by Ponziak *et al* comprises a nucleic acid encoding an IMI polypeptide having a serine to asparagine mutation in Domain E. Ponziak *et al* teach said wheat plant comprising three IMI nucleic acids at claim 13, and wherein the wheat plant is not transgenic at claim 15.

***Allowable Subject Matter***

7. Claims 71-74 are allowed.

***Conclusion***

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP §

706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Claims 22-27, 58, 62-70 and 75 are rejected.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David H. Kruse, Ph.D. whose telephone number is (571) 272-0799. The examiner can normally be reached on Monday to Friday from 8:00 a.m. to 4:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anne Marie Grunberg can be reached at (571) 272-0975. The central FAX number for official correspondence is 571-273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group Receptionist whose telephone number is (571) 272-1600.

/David H Kruse/  
Primary Examiner, Art Unit 1638  
28 August 2008